

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	WC Docket No. 08-152
Declaratory Ruling and Limited Waivers)	
Regarding Access Charges and the "ESP")	
Exemption)	

Comments of Comcast Corporation

Comcast Corporation (Comcast) submits these comments in response to the Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers (AT&T Petition).¹ Comcast currently provides voice service to over 5.6 million residential and business subscribers in 38 states. As the largest competitive provider of voice residential services and the fourth largest provider overall of such services in the United States, Comcast has a vital interest in the intercarrier compensation issues raised by the AT&T Petition.

Comcast supports the Commission's efforts to develop a plan for addressing the complex issue of intercarrier compensation reform by November of this year. Comcast fully agrees with the emerging industry consensus that comprehensive reform of the archaic system of intercarrier compensation is urgently needed. Because the "interim" proposal advanced by the AT&T Petition would preserve the current practice of assessing different termination rates for different

¹ See Public Notice, "Petition of AT&T for Interim Declaratory Ruling and Limited Waivers; Pleading Cycle Established," WT Docket No. 08-152, DA 08-1725 (rel. July 24, 2008); Public Notice, "Wireline Competition Bureau Grants Extension of Time to File Comments on AT&T's Petition for an Interim Declaratory Ruling and Limited Waivers," WT Docket No. 08-152, DA 08-1904 (rel. Aug. 13, 2008).

categories of traffic based on arbitrary, regulatory distinctions, Comcast opposes that petition. In contrast, the recent August 6 proposal submitted by a diverse array of service providers, including AT&T, represents a positive first step toward a comprehensive solution.² That proposal calls for the Commission to establish a uniform termination rate for all traffic, including Internet Protocol (IP)-enabled, at a level no higher than the current rate for the transport and termination of Internet Service Provider (ISP)-bound traffic (\$0.0007). Consistent with the approach of the August 6 submission, the Commission should concentrate its efforts on fashioning a durable regime to govern the exchange of all traffic and reject proposals, such as AT&T's interim approach, that offer only piece-meal solutions. Comcast also agrees with the principles recommended by Sprint Nextel for assessing whether and to what extent "alternative recovery mechanisms" are needed and, in particular, its opposition to claims that a carrier affected by intercarrier compensation reforms is entitled to a guaranteed revenue stream.³

Comcast also supports the request that the Commission rule unambiguously that all IP-enabled voice services that reach the public switched telephone network are under the FCC's exclusive jurisdiction and not subject to state PUC regulation. A uniform, nationwide regime is essential to ensure that retail IP-enabled voice services are not subjected to unnecessary legacy state regulations that hamper the development of robust, facilities-based competition. This, coupled with this Commission's continued commitment to safeguarding the Section 251/252

² See Letter to Chairman Martin and Commissioners, Federal Communications Commission, from AT&T Inc., *et al.*, WC Docket No. 04-36 (Aug. 6, 2008) (August 6 Letter).

³ See Letter from Norina Moy, Sprint Nextel Corporation, to Marlene H. Dortch, FCC Secretary, WC Docket No. 04-36, at 1-2 (Aug. 7, 2008) (Sprint Nextel Letter).

rights of emerging competitors will enable IP-enabled voice services to continue to provide residential consumers competitive choice for voice service.⁴

I. Comprehensive Reform of Inter-carrier Compensation is Imperative

The current, obsolete inter-carrier compensation regime originally was designed to function in a monopoly, circuit-switched world. The Telecommunications Act of 1996 supplanted the monopoly regulatory paradigm with a pro-competitive model. Further, the growth of the communications industry today is driven by innovative IP-enabled technologies and services. These IP-enabled services offer consumers and businesses an ever-expanding array of features and functions through an ever-growing range of devices.

Comprehensive reform of inter-carrier compensation is essential to ensuring that these trends continue to propel the industry's expansion. Otherwise, regulatory uncertainty will discourage investment in next-generation technologies and undermine the incentives of firms to develop and deploy innovative services that are not constrained by traditional communications regulatory categories. Moreover, service providers and this Commission will remain embroiled in controversies over the proper regulatory classification and treatment of different types of IP-enabled offerings.

⁴ See, e.g. *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (Wireline Competition Bureau 2007) (*Time Warner Interconnection Order*); *Telephone Number Requirements for IP-Enabled Services Providers*; *Local Number Portability Porting Interval and Validation Requirements*; *IP-Enabled Services*; *Telephone Number Portability*; *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*; *Final Regulatory Flexibility Analysis*; *Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 35 (2007) (*LNP Order*).

II. Regulatory Stability and Certainty Require Comprehensive Reform

The confusion, controversy, and uncertainty engendered by the existing intercarrier compensation regime make it impossible for the Commission to undertake effective reform through piece-meal measures. As long as the system requires or permits carriers to assess different rates to different categories of traffic based on obsolete regulatory distinctions, disputes over the proper regulatory treatment of certain types of services will continue to hamper unnecessarily the industry's robust growth.

The AT&T Petition is precisely the type of "interim" measure that the Commission should reject. Under the AT&T approach, non-local traffic originating in IP format and terminating on the "public switched telephone network" (PSTN) and non-local traffic originating on the PSTN and terminating in IP format would be subject to a uniform access charge set at the level of a carrier's current interstate charges. Terminating traffic subject to reciprocal compensation, however, would be assessed at a different, lower rate. Thus, the AT&T interim remedy would retain the same shortcomings with respect to the difficulties in classifying traffic and the creation of incentives to "game" the system that plague the existing regime. Indeed, even AT&T concedes that "[c]omprehensive reform is by far the healthier and more rational solution and it is the only solution that serves the long-term interests of America's consumers."⁵

In contrast, the August 6 reform proposal presented by voice providers from diverse segments of the industry, including AT&T, offers a sound, workable initial step toward a comprehensive long-term solution. As a policy matter, Comcast supports the eventual implementation of a bill-and-keep system of intercarrier compensation for the termination of all

⁵ Letter to Chairman Kevin Martin, Federal Communications Commission, from Robert W. Quinn, Jr., AT&T Inc., attached to letter from Henry Hultquist, AT&T Inc., to Marlene H. Dortch, FCC Secretary, WC Docket No. 04-36, at 2 (July 17, 2008).

traffic. The August 6 approach nonetheless would be a marked improvement over the existing compensation regime because it would establish a uniform termination rate for all traffic, regardless of originating point and regardless of protocol, at a level that is no higher than \$0.0007 per minute. Although one cannot overstate the complexities of formulating a concrete plan for implementing even this initial reform, Comcast is encouraged by the diverse support for the proposal among firms that “do not always agree on matters of public policy.”⁶

Comcast notes that the August 6 reform proposal provides for “appropriate alternative recovery mechanisms” only to the extent they are “needed.”⁷ Comcast shares the view of Sprint Nextel that to the extent that a carrier today assesses a higher per-minute charge for certain types of terminating traffic than it would assess under the August 6, 2008 proposal, the Commission should not automatically conclude that such a carrier is entitled to an offsetting increase in, for example, universal service support.⁸ Rather, an assessment of the need for “alternative recovery mechanisms” should be guided by the principles summarized in Sprint Nextel’s August 7, 2008 written *ex parte*: (1) federal universal service support is not intended to and should not be used as a “make whole” mechanism; (2) the need assessment should take into account a “provider’s overall portfolio of revenue sources and operations”; and (3) any alternative recovery mechanism “must promote competition.”⁹

III. The Commission Should Affirm Its Exclusive Jurisdiction Over IP-Enabled Services

Comcast supports the request that the Commission issue a ruling that makes clear that it has exclusive jurisdiction over IP-enabled services. This is another area where regulatory

⁶ August 6 Letter at 1 n.1.

⁷ *Id.* at 2.

⁸ *See* Sprint Nextel Letter at 1-2.

⁹ *Id.* at 2.

uncertainty and inaction by the FCC have encouraged some state commissions to consider the imposition of legacy circuit-switched regimes on retail VoIP providers.¹⁰ Indeed, as the records in the *Time Warner Interconnection Order* and recent Vermont Telephone proceedings indicate, some carriers that are exempt from the requirements of section 251(c)(3) have sought to use the FCC's failure to assert exclusive jurisdiction over IP-enabled services to refuse to comply with their interconnection and other obligations under sections 251(a) and 251(b).¹¹

The Commission's assertion of jurisdiction over these services will not only deter state efforts to impose unnecessary regulations on retail VoIP services, but also ensure that IP-enabled services can flourish under a uniform, nationwide regulatory regime. Commission orders that safeguarded the rights of VoIP providers to obtain interconnection and access to ported numbers were vital to ensuring that residential and other consumers would have a facilities-based choice for voice service, and will continue to be vital in the future.¹² The FCC's assertion of exclusive jurisdiction over IP-enabled services similarly will promote the continued rapid growth in the availability of those services to consumers throughout the nation, including those located in less densely populated areas.

¹⁰ See *Staff of the Public Service Commission of the State of Missouri v. Comcast IP Phone, LLC*, Case No. TC-2007-0111, Report and Order of the Missouri Public Service Commission at 2 (issued Nov. 1, 2007) (the Public Service Commission found that "Comcast IP Phone is offering local exchange and interexchange telecommunications services in Missouri without the required certificates of service authority. The Commission orders Comcast IP Phone to either apply for the appropriate certificate, or stop offering the service."); see also State of Vermont Public Service Board, Docket No. 7316, *Investigation into Regulation of Voice over Internet Protocol ("VoIP") Services*, Order Opening Investigation at 2 (May 16, 2007) (the Board found that "it is appropriate to open an investigation into state regulation of VoIP services.").

¹¹ See, e.g., *Time Warner Interconnection Order* ¶¶ 1-8; Comments of the Vermont Department of Public Service, WC Docket No. 08-56 (May 19, 2008).

¹² See, e.g., *Time Warner Interconnection Order*; *LNP Order*.

Conclusion

For the foregoing reasons, the Commission should concentrate its efforts on developing a comprehensive plan for reforming intercarrier compensation and reject proposals for piece-meal change. The Commission also should affirm its exclusive jurisdiction over IP-enabled services.

Respectfully submitted,

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August 21, 2008

Certificate of Service

I hereby certify that on this 21st day of August, 2008, I caused a true and correct copy of the foregoing Comments of Comcast Corporation to be sent by electronic mail to:

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